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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/357,423	07/20/1999	THOMAS M. BAER	17726-726	9233

34690 7590 07/16/2003

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EXAMINER
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CROSS, LATOYA I

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 07/16/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/357,423

Applicant(s)

BAER, THOMAS M.

Examiner

LaToya I. Cross

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 5-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 25-39 is/are rejected.
- 7) ☒ Claim(s) 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 21, 2003 has been entered.

### *Withdrawal of Rejections from Previous Office Action*

- The rejection of claims 1-4 and 25-37 under 35 USC 112, first paragraph is withdrawn in view of Applicants' showing of adequate support in the specification for the reaction chamber being defined in part by a carrier.
- The rejection of claims 1, 2, 4, 26, 28, 29 and 31-37 under 35 USC 103 over Shartle '660 is withdrawn in view of Applicants' amendment to the claims to recite that the carrier defines a part of the reaction chamber. Likewise, the rejection of claims 3, 25, 27 and 30 over Shartle '660 in view of Shartle '041 is also withdrawn.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of

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this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 and 26-28, 29, 31-37 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,043,080 to Lipshutz et al.

Lipshutz et al teach a diagnostic device. The device is a laminated device containing a plurality of chambers, equivalent to Applicants' claimed sample processing device, as recited in claim 26. The chambers include a sample collection chamber (202) and an extraction chamber (210), as recited in claim 2. With respect to claim 4, Lipshutz teaches that the device may contain pump diaphragms (114). Sample may be introduced into the sample collection chamber via a needle integrated with the device, which will mate with the sample collection chamber of the sample processing device (col. 4 lines 56-61). With respect to claim 28, the sample chamber is fluidly connected to the extraction chamber via a first channel (204). Second and third fluid channels (208, 212) are also disposed in the device, as recited in claims 31 and 37.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102(e) in view of the teachings of Lipshutz et al.

4. Claims 1 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,221,655 to Fung et al.

Fung et al teach an assembly for isolation and analyzing a sample. The assembly comprises a spin filter portion and a centrifuge portion. Sample material is placed into the spin filter portion and the filter portion is mated with the centrifuge tube for processing the sample. The centrifuge tube is equivalent to Applicants' claimed sample processing device. The spin filter portion of the assembly is equivalent to Applicants' claimed sample carrier, since sample is carried on the filter frit and/or screen.

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Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102(e) in view of the teachings of Fung et al.

*Allowable Subject Matter*

5. Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


The prior art of record fails to teach or suggest a sample processing device mated with a sample carrier, where the sample processing device is a centrifuge tube having first and second chambers, first and second ports and where the first chamber is coupled to the second chamber via one of the ports.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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June 30, 2003

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700